

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
CABLEVISION SYSTEMS CORP.)	
and)	MB 09-168
UTILITIES TELECOM COUNCIL)	
)	
Request for Waiver of the Prohibition on)	
Encryption of the Basic Service Tier)	

COMMENTS OF CITY OF YONKERS, NEW YORK

The City of Yonkers, New York ("City"), by counsel and pursuant to the Commission's Public Notice, DA 09-2094 (rel. Sept. 23, 2009), hereby respectfully submits comments in opposition to the request made by Cablevision Systems Corp. ("Cablevision") for waiver of section 76.630(a) of the Commission's rules, 47 C.F.R. § 76.630(a), to allow encryption of its basic tier of cable service in New York City.¹

INTRODUCTION

With a population of approximately 200,000, the City of Yonkers is the fourth largest city in the State of New York, and the largest city in Westchester County. The City shares a border with the New York City borough of the Bronx, and is two miles north of Manhattan.

The primary cable operator in the City is Cablevision, via its affiliate Cablevision Systems Westchester Corp. Cablevision provides cable television, telephone, and Internet services in the City. Cablevision is subject in the City to a franchise agreement entered into on December 17, 1985, which expired almost 15 years ago, and has been extended by continual renewal of a grant of Temporary Operating Authority (TOA) issued by the New York Public Service Commission. The latest TOA expires on November 9, 2009.

¹ See Petition for Waiver of Cablevision Systems Corp., MB 09-168 (filed Aug. 24, 2009) (the "Petition").

In the Petition, Cablevision seeks permission to encrypt its most basic level of cable television service—including broadcast and public, educational, and government (PEG) channels—so as to ease its transition to an all-digital platform and to increase the number of subscribers with access to more profitable add-on services available with a digital cable box. This action is best viewed as only the latest in a line of actions by the cable operator to marginalize its basic cable subscribers in hopes of expanding its digital customer base. Nonetheless, Cablevision suggests alternate reasons why this action would not only be in its interest, but the public's as well. Because the benefits to Cablevision do not outweigh the harm to its subscribers, however, and because the City expects that whatever Cablevision is allowed to do in New York City will be sought soon after across the border in Yonkers, the City opposes Cablevision's request.

COMMENTS

I. Cablevision's Erosion of Basic Service

Far from the flashy services that cable operators like Cablevision advertise, including video-on-demand, pay-per-view, and high-definition offerings, there exists a very large number of standard, or basic cable subscribers. These Cablevision customers, including many low-income and elderly residents in the City, rely upon cable as a means of getting basic news and entertainment from broadcast stations, as well as PEG stations, via a simple cable plugged directly into their TV, generally without need for purchase of additional equipment. In many ways, basic cable service has been viewed by the City's residents as a form of a utility (though Yonkers realizes that cable is not a public utility).

For many years, the cost of that basic service in the City was admirably low. As technology advanced, however, and Cablevision became able to offer more channels and more

features on a digital platform, typically at higher prices and profit margins, it began to take actions that appear aimed at devaluing service to the basic tier customers.² As explained in more detail below, in the City of Yonkers, Cablevision has continued to degrade its provision of basic cable services, first by removing PEG channels, then commercial channels, to a digital tier requiring additional equipment often at cost to subscribers (in some instances Cablevision has provided one converter box per household for a limited period of time).

As a result of this system-wide plan to migrate customers to digital platforms, Cablevision has seen a steady decrease in its number of basic subscribers, and a commensurate increase in its number of digital subscribers and in its average revenue per subscriber.³ In May of 2009, for example, Cablevision reported a year-over-year drop of 23,100 basic cable subscribers, but an increase of 177,500 digital cable subscribers.⁴ Cablevision's shift of customers to digital, their customer's rental of digital equipment, and their new-found ability to purchase on-demand and pay-per-view services (as well as the company's ability to sell other services like telephone and Internet) has increased the average revenue per subscriber (RPS) for Cablevision to \$136.55 per month, an increase of five percent from the previous year.⁵ Although this is good news for Cablevision, as set forth below, it has not been good news for the basic cable subscriber.

² These comments focus on non-advertising actions taken by Cablevision. The City also is aware that the cable operator no longer advertises, or prominently features, the basic service as an option to subscribers in its mailings, Internet, and other advertisements.

³ See, for example, "Cablevision Profits Up, Basic Subs and Outlook Down," Cable360.net (Aug. 8, 2007) (noting revenue per subscriber increase of 11 percent from 2006 to 2007, "marking the company's 17th consecutive quarter of year-over-year double digit RPS growth." (emphasis supplied) (available at http://www.cable360.net/voice/Cablevision-Profits-Up-Basic-Subs-and-Outlook-Down_25029.html)).

⁴ See "Cablevision Posts Profit; Explores Garden Spinoff," Long Island *Business News* (May 7, 2009) (available at <http://libn.com/blog/2009/05/07/cablevision-posts-profit-explores-garden-spinoff/>).

Shift of PEG Channels

Cablevision started its degradation of basic service by targeting the City's PEG channels. On August 12, 2008, Cablevision informed the City that it had decided, unilaterally, that it would shift all three of the City's PEG channels to a digital tier.⁶ As a result of the change, City customers were required to acquire a digital cable box or CableCARD to view these channels.

Cablevision offered to provide a single free converter box per household, free for one year, if subscribers acted within a limited period of time. Additional boxes would cost the subscriber money, as would remote controls and all equipment after the first year. Further, new customers or customers opting to get a box after the "promotion" ended would be charged for every box they needed. As a result, in most instances, the City's basic cable subscribers would have to pay an additional monthly fee simply to enjoy their local PEG channels.

The City informed Cablevision that it viewed the shift of these PEG channels to be a creation of a higher level of service, beyond the basic tier, and that it believed this shift was a violation of the operator's franchise agreement, and a violation of federal law. *See* 47 U.S.C. § 543(b)(7); *In the Matter of the Section of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation*, 8 FCC Rcd at 5737-38 (cable provider required "to carry PEG channels on the basic tier unless the franchising authority explicitly permits carriage on another tier"); *In the Matter of the Section of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation*, 8 FCC Rcd 5631, 5644 (1993)(cable providers to provide PEG channels on a single basic service tier); *Time Warner v. FCC*, 56 F.3d 151, 199 (D.C. Cir. 1995) (finding single basic tier requirement consistent with statute).

⁵ *Id.*

⁶ *See* Letter from Robert Hoch, Director Government Affairs Cablevision (Aug. 12, 2008), attached hereto as Exhibit A.

The City threatened legal action against Cablevision over this specific issue. Ultimately, Cablevision and the City resolved this issue through an informal settlement in March 2009. Before that month was over, however, Cablevision had renewed its erosion of the basic cable package, this time with commercial channels.

Shift of Commercial Channels

On March 31, 2009, Cablevision informed City Mayor Philip A. Amicone that it planned to shift more than a dozen additional channels off its basic tier.⁷ This time, the channels included commercial stations, including popular programming like CNN Headline News, AMC, and MSNBC, as well as family programming like ABC Family.

Again, Cablevision indicated that it would provide, for a limited time, a free digital converter box. The City again objected noting that, for all customers after the thirteenth month (when the promotion ended), for all customers seeking boxes after the promotional period had ended and for all customers with more than one television requiring a box, these basic cable subscribers would have to pay more to receive their basic level of service. Alternately, because Cablevision did not offer any form of reduction in the basic cable price, customers could decline to acquire a converter and could, instead, essentially pay the same price for fewer channels. The City argued this was impermissible under the franchise agreement, and in violation of state and federal law, including section 76.1603(c) of the Commission's rules, which requires that when a cable company migrates channels to its "Switched Digital Video" platform, it makes a "service change" within the meaning of the regulation and that it must provide 30-days advance, written notice, not only to subscribers, but also to the local franchising authority. *See* 47 C.F.R. § 76.1603(c); *see also Oceanic Time Warner Cable, et al.*, 24 FCC Rcd 8716 (2009).

⁷ *See* Letter from Robert Hoch, Director Government Affairs Cablevision (March 31, 2009), attached hereto as Exhibit B.

Cablevision's response to the City has been, and remains, that the City's objections are an effort at rate regulation, which is not permissible because of a determination by the Commission that Cablevision is subject to effective competition in the City.⁸ Cablevision also has claimed that it is not shifting any channels, but deleting duplicate analog feeds of those channels. This is disingenuous; the reality is that customers accustomed to these channels on the basic level of service must now acquire equipment, ultimately at great annual cost, to receive these channels.

The City continues to disagree with Cablevision and believes that these actions are not in the best interests of City residents. The City is further concerned that the trend of eviscerating the content available in the basic service tier will continue. Cablevision's actions also have continued to hamper on-going negotiations of a cable franchise.⁹

Encryption of Basic Tier

Now, Cablevision seeks in New York City, and presumably soon after in the City of Yonkers and elsewhere, waiver of the Commission's rules to permit it to encrypt the basic service tier, thereby ensuring that every one of its customers must have some form of digital access. Cablevision concedes that this request would require many basic service customers to purchase additional equipment, at an "additional cost and inconvenience." Petition at 2. The Commission notes in its Public Notice that if Cablevision were granted a waiver, its basic service customers without digital capabilities would need to "buy or rent additional equipment (either a set-top box or CableCARD)."

⁸ See *In the Matter of Subsidiaries of Cablevision Systems Corporation: Petitions for Determination of Effective Competition in Communities in New York State*, 23 FCC Rcd 5732 (2008).

⁹ The City apparently is not alone its inability to reach a franchise agreement with Cablevision. Indeed, Cablevision notes in its annual 10-K filing that as of the end of 2008, it did not have current franchises in place with half of the main municipalities in which it operates. See Cablevision Systems Corporation, Form 10-K, at 7 (filed Feb. 26, 2009) ("As of December 31, 2008, our ten largest franchise areas comprise approximately 48% of our total basic video customers and of those, five franchises comprising approximately 902,000 basic video customers, are expired.").

The Commission should not allow Cablevision's further degradation in basic service. Cablevision already has undermined the notion that PEG channels should be carried on a single tier without need for additional equipment. Cablevision already has moved, and will continue to move, popular programming to a tier requiring specialized equipment. Now, it seeks to require that all basic channels be accessed digitally, including especially via equipment rented from Cablevision. The Commission should put a stop to these practices by requiring Cablevision to abide by federal proscriptions on encrypting basic cable service.

II. The Petition Fails to Establish Sufficient Reasons for Waiver

Cablevision continues to erode its quality of service in the basic service tier. Allowing encryption in New York City, and creating that precedent for use in other Cablevision service areas like Yonkers, will make a bad situation even worse for consumers. The Commission must balance this clear harm against what appears to be a waiver request premised upon claimed benefits that are little more than supposition and conjecture.

The Petition claims essentially three benefits of allowing a waiver of the prohibition on encrypting the basic tier of service. Upon closer review, none are well-founded, and none outweigh the burden to consumers.

First, by allowing for encryption, Cablevision claims that it will have less of a problem with "unauthorized signal distribution" and "the potential for signal theft." Petition at 3, 6. Yet, Cablevision offers neither statistics nor studies—much less anecdotal evidence—that signal theft is a problem for the company in New York City or elsewhere in its service territory. Instead, it asks the Commission simply to agree with its statement that encryption, more so than its lock boxes on utility poles and in multiple dwelling units, is a "better mousetrap" against cable theft. This claimed, but unsupported, benefit, is unavailing.

Second, Cablevision asserts that allowing for the encryption of the basic tier will allow for fewer service calls, because the company could “perform connections and disconnections remotely.” *Id.* at 4. This reduction in “truck rolls,” Cablevision claims, will result in fewer costs to the company and a reduction in carbon dioxide emissions by the removal of many of its (apparently gasoline-operated) trucks from the roads. *Id.* at 5. This claim, however, does not appear to compensate for job losses of local cable installers, or the emissions produced by customers who have to drive to-and-from Cablevision offices to “pick up a digital set-top box at a walk-in center” or the emissions of parcel delivery for those customers who decide to “have it shipped directly to their home,” or for service calls for customers who cannot figure out the installation. *Id.* at 4. In short, Cablevision citing carbon emissions reduction in this instance appears to be a cynical and ham-handed attempt to capitalize on a national policy debate.

Third, and finally, Cablevision claims that customers will benefit by being able to perform the installation themselves and without need to wait for the cable company to arrive to do so. It is not clear, however, where the benefit is found, since the company appears to plan to charge customers for that privilege too. *Id.* at 4-5 (“New subscribers that take advantage of the option to self-install would be able to enjoy reduced installation costs...” (emphasis supplied)). Moreover, this presumes that customers wish to (or are able to) perform such installations, which may be needed on multiple televisions.

Cablevision’s claimed benefits are largely hollow. Alleged reductions in undocumented thefts, specious claims of emissions reductions, and claims that customers will prefer to install their own equipment are not sufficient to establish the need for a waiver. Certainly, Cablevision could establish that shifting an entire subset of its customers to a digital platform will be easier for it to cross-sell these customers on its myriad other services, and to collect additional monthly

equipment rental fees for each television in customer's homes. Improving Cablevision's bottom line may be to the benefit of its shareholders, but it is not, alas, in the public interest. Rather than forcing customers to pay for a higher level of service through regulatory fiat (or forego service altogether), Cablevision should compete in the marketplace for customers.

CONCLUSION

Cablevision's request for waiver is only one in a long line of actions taken recently in New York, including in the City of Yonkers, that is detrimental to its customers. If allowed to take this action in New York City, the Commission will create precedent that will allow Cablevision to take this detrimental action throughout its service area, including in the City of Yonkers. Cablevision's Petition seeks benefits largely for itself, with no commensurate benefit to its customers. Accordingly, the Commission should reject Cablevision's Petition and decline to issue a waiver.

Respectfully submitted,

/s/ Frank J. Rubino

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Dated: October 21, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 2009, a true copy of the foregoing was sent U.S. Mail, postage prepaid, addressed as follows:

Howard J. Symons, Esq.
Mintz Levin
701 Pennsylvania Ave., NW
Washington, DC 20004

Hon. Jaclyn A. Brilling
Secretary to the Commission
New York Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 1223-1350

John Figliozi
Office of Telecommunications
New York Public Service Commission
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/s/ William R. Derasmo
William R. Derasmo

Robert Hoch, Director
Government Affairs
(914) 378-4515 phone
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rhoch@cablevision.com



August 12, 2008

The Honorable Philip Amicone, Mayor
City of Yonkers
40 South Broadway
Yonkers, NY 10701

Dear Mayor Amicone:

As part of our ongoing efforts to deliver the best value and highest quality entertainment experience, Cablevision will be making a change to our service that will impact a small number of customers.

As of September 16, 2008, Cablevision's public, educational, and government ("PEG") access and local programming channels will be transmitted only in a digital format. As a result of this change, a digital cable ready television (equipped with a QAM tuner), a digital cable box or a CableCARD will be needed to receive PEG access and local programming channels. This migration is part of an ongoing effort to meet customer demand for the most technologically advanced services, including high-definition programming and other service enhancements.

We are committed to ensuring that customers who receive our analog-only service can continue to view PEG access and local programming at no additional cost. We are notifying all of our subscribers of this change and providing instructions to our analog-only customers on how to continue to receive these channels, with no additional cost.

More than 89 percent of Cablevision's cable television customers today subscribe to digital cable service – the highest rate of digital penetration in the nation – and this number continues to grow. These digital customers will continue to receive PEG access and local programming channels on all sets on which they receive digital services without any additional equipment or cost.

Please note PEG access and local programming services will continue to be shown on their current channel positions after the change to digital only transmission.

Channels in your area are:
Ch. 18 – Public Access/Local Programming
Ch. 75 – Board of Education
Ch. 78 – City Hall TV

Please feel free to contact me at 914-378-4515 if you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Hoch", written over a horizontal line.

Robert Hoch

CABLEVISION
Six Executive Plaza, Yonkers, NY 10701
914 378-8960

EXHIBIT A

ROBERT HOCH, DIRECTOR
GOVERNMENT AFFAIRS
(914) 378-4515 PHONE
(914) 909 0207 FAX
rthoch@cablevision.com



March 31, 2009

The Honorable Philip Amicone, Mayor
City of Yonkers
40 South Broadway
Yonkers, NY 10701

Dear Mayor Amicone:

With more than 91 percent of our customers already enjoying the significant benefits made possible by digital technology, Cablevision is leading the transition to a digital future in a customer-friendly way. As part of this effort, effective May 5, 2009, we will be eliminating the duplicate analog feeds of the programming services listed on the attached schedule.

Although the channels will remain in their existing package, they will only be available on televisions with a digital set-top box or CableCARD, with the exception of C-SPAN, which can also be viewed on a digital cable-ready TV with a QAM tuner. All programming will remain in the same channel locations on Cablevision's digital set-top boxes.

To ease the transition for our remaining analog customers, Cablevision is voluntarily offering one iO digital cable box and remote, plus iO Navigation, free for one year. This offer will expire on July 4, 2009. Our analog customers will be notified of these changes through multiple contacts including two direct mail pieces and on-air notifications.

This free offer allows current analog expanded basic customers to experience more than 120 additional channels – including more than 40 HD services that are included in our expanded basic line-up, 46 digital music channels, access to 4,000 On Demand programs — including thousands of free selections, an interactive channel guide and enhanced parental control features. Analog customers that do not accept this offer will continue to receive approximately 45 channels through our analog expanded basic level of service on a grandfathered basis. Cablevision recently announced that it will no longer sell analog expanded basic service to new customers as of the end of the year.

Cablevision's effort to ease our analog customers' transition by retaining some of the most popular channels in analog contrasts with phone company and satellite TV competitors, who do not offer any analog option for customers, and require digital equipment on every television in order to receive any level of service.

If you have any questions, please feel free to contact me at 914-378-4515.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Robert Hoch', written over a horizontal line.

Robert Hoch

Encl.

CABLEVISION
Six Executive Plaza, Yonkers, NY 10701
914 378-8960

EXHIBIT B

Yonkers
Effective May 5, 2009

Level/Service	Channel
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Expanded Basic

**(Channels scheduled for digital
delivery only; converter box**

ABC Family	49
AMC	43
BET	54
CNN Headline News	59
History	47
Lifetime	45
MSNBC	23
MTV	53
MTV2	55
Spike TV	41
TV Land	34
VH1	52
WE	42
Galavision	68
Fuse	56

Broadcast Basic

**(Channel scheduled for digital
delivery only; no converter box
required on digital televisions with**

C-Span	74
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